

In the Indiana Supreme Court

CASE NUMBER:

ORDER AMENDING ADMINISTRATIVE RULES

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, Rules 1, 5, 7, 9, 10, 14, and 16 of the *Indiana Administrative Rules* are amended to read as follows (deletions shown by ~~striking~~ and new text shown by underlining):

ADMINISTRATIVE RULES

...

Rule 1. Preparation and Filing of Caseload Statistical Reports

...

E) County Caseload Plans. The courts of record in a county shall, by a local rule, implement a caseload allocation plan for the county that ensures an even distribution of judicial workload among the courts of record in the county.

(1) *Schedule for Plans.* The Indiana Supreme Court Division of State Court Administration (Division), with Supreme Court approval, shall prepare and publish a schedule for the submission and approval of such local caseload allocation plans. The schedule shall ensure that the courts of record in each county must review and submit a new plan or re-submit an existing plan not less than once every two (2) years.

(2) *Weighted Caseload Measures and Caseload Variance.* Based on the statistical reports submitted pursuant to this rule and a weighted caseload measures system, the Division shall

prepare and publish annually a weighted caseload report on the caseload of the Indiana trial courts of record.

The caseload allocation plans required under this section must ensure that the utilization variance among the courts of record in the county, based on a weighted caseload measures system, does not exceed forty (40) percentage points between any courts in the county.

(3) *Approval of Plans.* With Supreme Court approval, the Division may approve a county plan that complies with the forty (40) percentage points utilization variance, return a plan which does not comply and request revisions, grant an exception for good cause shown, or reject a plan for not complying with the utilization variance. Should a county fail to adopt such a plan, the Supreme Court shall prescribe a plan for use by the county.

...

Rule 5. Payment and Notification Procedures

...

(B) Senior Judges. The Division of State Court Administration shall administer the payment procedures for senior judges in accordance with the provisions set for in this rule.

...

(9) *Senior Judge Serving as Mediator.* A senior judge who is also a registered mediator and serves as a mediator in a court-ordered mediation pursuant to ~~IC 33-4-8-3~~ IC 33-23-3-3, or on a pro bono basis, may receive senior judge service credit for said mediation service provided that the senior judge is not compensated at a rate greater than the per diem rate for senior judges.

...

RULE 7. JUDICIAL RETENTION SCHEDULES

...

II. PROCEDURE

...

CRIMINAL (2)

...

87-2-21.1R	Dismissed Criminal Felony Case Files	9/1881- +	destroy 2 years after order to dismiss is given.
------------	---	-----------	---

...

89-2-33R	Certificates on Standards for Breath Test Operators, Equipment & Chemicals (IC 9-30-6-5)	1983- +	destroy 10 years after filing or upon recordation in Nonjudicial Order Book 89-1.1-19.1.
----------	--	---------	--

<u>05-2-34</u>	<u>Dismissed</u> <u>Misdemeanor</u> <u>Case Files</u>	<u>9/1881</u>	<u>destroy 1 year after order</u> <u>to dismiss is given.</u>
----------------	---	---------------	--

<u>05-2-35</u>	<u>Forensic Diversion</u> <u>Program</u>	<u>2004 - +</u>	<u>destroy 6 years after release of</u> <u>individual from final discharge.</u>
----------------	---	-----------------	--

...

GENERAL SCHEDULES (9)

87-9-01	Jury Lists (name slips and lists)	1790-+	maintain for ten years unless entered in order book. If entered in order book, destroy <u>1</u> <u>2</u> years after drawing.
---------	-----------------------------------	--------	---

...

90-9-05	Jury Questionnaire Forms	1881 - +	destroy after <u>1</u> <u>2</u> years from date of creation.
---------	--------------------------------	----------	---

<u>05-9-06</u>	<u>Documentation</u> <u>supporting juror</u>	<u>2003 - +</u>	<u>retain for a minimum of two (2) years.</u>
----------------	---	-----------------	---

disqualifications,
exemptions, and
deferrals

05-9-07 Digital Master 2005 - +
created in
accordance with
Administrative
Rule 6

deposit digital master (regardless
of medium [used for generation of
microfilm]) with the Indiana Commission
on Public Records Vault for security
backup.

...

Rule 9. Access to Court Records

...

(G) Court Records Excluded From Public Access

(1) *Case records.* The following information in case records is excluded from public access and is confidential:

...

(d) Complete Social Security Numbers of living persons;

(e) With the exception of names, information such as addresses, phone numbers, and dates of birth which explicitly identifies:

(i) natural persons who are witnesses or victims (not including defendants) in criminal, domestic violence, stalking, sexual assault, juvenile, or civil protection order proceedings, provided that juveniles who are victims of sex crimes shall be identified by initials only;

(ii) places of residence of judicial officers, clerks and other employees of courts and clerks of court;

unless the person or persons about whom the information pertains waives confidentiality;

(f) Complete account numbers of specific assets, liabilities, loans, bank accounts, credit cards, and personal identification numbers (PINs) not admitted into evidence as part of a public proceeding;

...

Rule 10. Security of Court Records

(A) **Court Responsibilities.** Each judge is administratively responsible for the integrity of the judicial records of the court and must ~~insure~~ ensure that measures and procedures are employed to protect such records from mutilation, false entry, theft, alienation, and any unauthorized alteration, addition, deletion, or replacement of items or data elements.

...

Rule 14. Audio/Video Telecommunication in Criminal, Juvenile, ~~and~~ Mental Health, and Civil Proceedings

(A) **Authority.** A trial court may, in its discretion, conduct hearings and proceedings utilizing audio/video telecommunications pursuant to the provisions of this rule in the following circumstances:

(1) In criminal proceedings, a court may utilize video telecommunications in conducting:

- (a) Initial hearings pursuant to IC 35-33-7-1, 3, 3.5, 4 and 5, including any probable cause hearing pursuant to IC 35-33-7-2; determination of indigence and assignment of counsel pursuant to IC 35-33-7-6; amount and conditions of bail pursuant to IC 35-33-7-5(4), 35-33-8-3.1 and 4; and the setting of omnibus date pursuant to IC 35-36-8-1;
- (b) Pre-trial conferences;
- (c) The taking of a plea of guilty to a misdemeanor charge, pursuant to IC 35-35-1-2;
- (d) Sentencing hearings pursuant to IC 35-38-1-2 when the defendant has given a written waiver of his or her right to be present in person and the prosecution has consented;
- (e) With the written consent of the parties, post-conviction hearings pursuant to Ind. Post-Conviction Rule 1(5).

(2) In mental health proceedings, a court may utilize video telecommunications in conducting:

- (a) Preliminary hearings in mental health emergency detention proceedings pursuant to IC 12-26-5-10;
- (b) Review hearings in mental health commitment proceedings pursuant to IC 12-26-15-2.

(3) In juvenile proceedings a court may utilize video telecommunications:

(a) When a child is alleged to be a delinquent child, for a detention hearing pursuant to IC 31-37-6 and or a periodic review hearing pursuant to IC 31-37-20-2;

(b) When a child is alleged to be a child in need of service, for a detention hearing pursuant to IC 31-34-5 and or a periodic review hearing pursuant to IC 31-34-21-2; and

~~(a) —~~ (4) In civil proceedings, witness testimony may be presented by audio/video telecommunications when the parties consent; and

(5) In any other hearing or proceeding in which the parties waive their rights of appearance.

All such waivers shall be entered on the Chronological Case Summary.

...

RULE 16. ELECTRONIC FILING AND ELECTRONIC SERVICE PILOT PROJECTS

(A) Definitions. The following definitions shall apply to this rule:

~~(B)~~ (1) E-Filing System. An e-filing system is a system approved by the Indiana Supreme Court for filing and service of pleadings, motions and other papers ("Documents") via an electronic means such as the Internet, a court-authorized remote service provider, or through other remote means to and from the trial court's case management system.

(2) Electronic Filing. Electronic filing ("E-filing") is a method of filing court documents with the Clerk of the Court by electronic transmission utilizing the E-filing system.

(3) Electronic Service. Electronic service ("E-service") is a method of serving Documents by electronic transmission on any User in a case via the E-filing system.

(4) User Agreement. A user agreement is an agreement that establishes obligations and responsibilities of the User and the Court and provides guidelines for proper use of the E-filing system.

(5) User. A user is an individual that has received authorization from the trial court administering an E-filing system to use that E-filing system by remote access.

(CB) Approval. Courts wishing to establish an electronic filing or an electronic service pilot project pursuant to these rules must submit a written request for approval and a plan to the Division of State Court Administration. The Division shall define the necessary elements of the plan. At a minimum, the plan must state if and how the system is compatible with the clerk's office and other court users, if it is accessible to the public, if it is accessible to self-represented litigants, if and what sort of fees will be charged, and all technical details relevant to the approval process. The plan must also include a

process for archival record retention that meets the permanent and other record retention requirements of the Indiana Rules of Court.

(DC) User Agreements. The User Agreement must be approved by the Division of State Court Administration. The User and the Court must execute the User Agreement before the User may use the E-filing system. The User must file the executed User Agreement, and the clerk must note the filing of the agreement on the Chronological Case Summary (CCS) and enter it into the Record of Orders and Judgments (RJO) of the case in which the User is appearing. In the User Agreement, the User must agree to receive service of Documents through the E-filing system. In the User Agreement, the Court shall issue to the User distinct remote access with a unique password and user identification. The trial court may enter into a User Agreement with any attorney licensed to practice law in Indiana and with any part in a particular case.

(ED) Fees. Upon the request and at an amount approved by the majority of judges of courts of record in the county, the County Board of Commissioners may adopt an electronic system fee to be charged in conjunction with the use of the E-filing system. The fees must be included in the User Agreement.

(EE) Signing of Documents. Documents filed through the E-filing system by use of a valid username and password are presumed to have been signed and authorized by the User to whom that username and password have been issued.

(GF) Commencement of an Action. An action may not be commenced by E-filing. An action must be commenced in conformity with Trial Rule 3 and pursuant to Trial Rules 4 through 4.17 of the Indiana Rules of Trial Procedure.

(HG) Time of Filing. Documents may be filed through an E-filing system at any time that the Clerk's office is open to receive the filing or at such other times as may be designated by the Clerk and posted publicly. Documents filed through the E-filing system are deemed filed when received by the Clerk's office, except that Documents received at times that the Clerk's office is closed shall be deemed filed the next regular time when the Clerk's office is open for filing. The time stamp issued by the E-filing system shall be presumed to be the time the Document is received by the Clerk.

(IH) Original Document. Until such time that a Court implements a process approved by the Division of State Court Administration for the permanent retention of electronically transmitted, served or maintained documents, the Court must maintain a traditional paper copy of all electronic documents required to be maintained pursuant to the Indiana Rules of Court in the medium required. Upon the approval by the Division of State Court Administration of a permanent record retention process for electronically filed and served documents, a Document filed or served through an E-filing system shall be deemed an original record. Attorneys and self-represented parties must retain signed copies of such electronically filed documents and, upon the Court's request, must provide such documents to the Court.

(JI) Request for Changes to the System. A Court authorized to administer an E-filing system must seek approval from the Division of State Court Administration for any changes to the E-filing system that the Court wishes to implement after the initial approval.

**RULE FOR ELECTRONIC FILING
AND ELECTRONIC SERVICE
PILOT PROJECTS**

~~RULE FOR ELECTRONIC FILING AND ELECTRONIC SERVICE PILOT PROJECTS~~

~~(A) Definitions. The following definitions shall apply to this rule:~~

~~(B) (1) E-Filing System. An e-filing system is a system approved by the Indiana Supreme Court for filing and service of pleadings, motions and other papers ("Documents") via an electronic means such as the Internet, a court authorized remote service provider, or through other remote means to and from the trial court's case management system.~~

~~(2) Electronic Filing. Electronic filing ("E-filing") is a method of filing court documents with the Clerk of the Court by electronic transmission utilizing the E-filing system.~~

~~(3) Electronic Service. Electronic service ("E service") is a method of serving Documents by electronic transmission on any User in a case via the E-filing system.~~

~~(4) User Agreement. A user agreement is an agreement that establishes obligations and responsibilities of the User and the Court and provides guidelines for proper use of the E-filing system.~~

~~(5) User. A user is an individual that has received authorization from the trial court administering an E-filing system to use that E-filing system by remote access.~~

~~(C) Approval. Courts wishing to establish an electronic filing or an electronic service pilot project pursuant to these rules must submit a written request for approval and a plan to the Division of State Court Administration. The Division shall define the necessary elements of the plan. At a minimum, the plan must state if and how the system is compatible with the clerk's office and other court users, if it is accessible to the public, if it is accessible to self-represented litigants, if and what sort of fees will be charged, and all technical details relevant to the approval process. The plan must also include a process for archival record retention that meets the permanent and other record retention requirements of the Indiana Rules of Court.~~

~~(D) User Agreements. The User Agreement must be approved by the Division of State Court Administration. The User and the Court must execute the User Agreement before the User may use the E-filing system. The User must file the executed User Agreement, and the clerk must note the filing of the agreement on the Chronological Case Summary (CCS) and enter it~~

~~into the Record of Orders and Judgments (RJO) of the case in which the User is appearing. In the User Agreement, the User must agree to receive service of Documents through the E-filing system. In the User Agreement, the Court shall issue to the User distinct remote access with a unique password and user identification. The trial court may enter into a User Agreement with any attorney licensed to practice law in Indiana and with any part in a particular case.~~

~~(E) Fees.— Upon the request and at an amount approved by the majority of judges of courts of record in the county, the County Board of Commissioners may adopt an electronic system fee to be charged in conjunction with the use of the E-filing system. The fees must be included in the User Agreement.~~

~~(F) Signing of Documents.— Documents filed through the E-filing system by use of a valid username and password are presumed to have been signed and authorized by the User to whom that username and password have been issued.~~

~~(G) Commencement of an Action.— An action may not be commenced by E-filing. An action must be commenced in conformity with > Trial Rule 3 and pursuant to > Trial Rules 4 through > 4.17 of the Indiana Rules of Trial Procedure.~~

~~(H) Time of Filing.— Documents may be filed through an E-filing system at any time that the Clerk's office is open to receive the filing or at such other times as may be designated by the Clerk and posted publicly. Documents filed through the E-filing system are deemed filed when received by the Clerk's office, except that Documents received at times that the Clerk's office is closed shall be deemed filed the next regular time when the Clerk's office is open for filing. The time stamp issued by the E-filing system shall be presumed to be the time the Document is received by the Clerk.~~

~~(I) Original Document.— Until such time that a Court implements a process approved by the Division of State Court Administration for the permanent retention of electronically transmitted, served or maintained documents, the Court must maintain a traditional paper copy of all electronic documents required to be maintained pursuant to the Indiana Rules of Court in the medium required. Upon the approval by the Division of State Court Administration of a permanent record retention process for electronically filed and served documents, a Document filed or served through an E-filing system shall be deemed an original record. Attorneys and self-represented parties must retain signed copies of such electronically filed documents and, upon the Court's request, must provide such documents to the Court.~~

~~(J) Request for Changes to the System.— A Court authorized to administer an E-filing system must seek approval from the Division of State Court Administration for any changes to the E-filing system that the Court wishes to implement after the initial approval.~~

These amendments shall take effect January 1, 2006.

The Clerk of this Court is directed to forward a copy of this order to the clerk of each circuit court in the state of Indiana; Attorney General of Indiana; Legislative Services Agency and its Office of Code Revision; Administrator, Indiana Supreme Court; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Prosecuting Attorney's Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; Indiana Judges and Lawyers Assistance Program; the libraries of all law schools in this state; the Michie Company; and the West Group.

The West Group is directed to publish this Order in the advance sheets of this Court.

The Clerks of the Circuit Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this _____ day of July, 2005.

Brent E. Dickson
Acting Chief Justice of Indiana

All Justices Concur